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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIBCO SOFTWARE INC.

Plaintiff,

v.

FEI COMPANY,

Defendant.

CASE NO. 17-CV-00696-EJD

**JOINT STIPULATION, MOTION,
AND ~~[PROPOSED]~~ ORDER FOR
STAY OF LITIGATION PENDING
FINALIZATION OF SETTLEMENT
AGREEMENT**

Dept.: Courtroom 4
Judge: Hon. Edward J. Davila

Complaint Filed: Feb. 10, 2017

1 Plaintiff TIBCO SOFTWARE INC. ("Plaintiff") and defendant FEI COMPANY
2 ("Defendant") hereby stipulate and jointly move this Court for an order staying the above-
3 captioned litigation for a period of sixty (60) days to allow for the parties to finalize, perform,
4 and complete their settlement agreement.

5 **I. FACTUAL BACKGROUND**

6 Plaintiff commenced this lawsuit by the filing of its initial complaint on February 10,
7 2017. (Doc. 1.) Plaintiff's amended pleading, which is the operative complaint in this case, was
8 filed on May 2, 2017. (Doc. 25.) Defendant answered the amended complaint on May 16, 2017,
9 and filed an amended answer on June 16, 2017. (Docs. 26, 34.)

10 The parties filed their joint case management statement on June 8, 2017. (Doc. 32.) On
11 June 12, 2017, this Court issued its Case Management Order, establishing the schedule for
12 discovery, motions, and pre-trial matters in this case. (Doc. 33.) On November 22, 2017, this
13 Court granted the parties' request for an extension of certain discovery and motion-filing
14 deadline, which order did not affect the originally-set joint trial setting conference statement and
15 trial setting conference dates. (Doc. 39.)

16 The parties participated in a court-sponsored ADR session with Mr. Mark LeHocky
17 pursuant to Civ.L.R. 16-8 on July 13, 2017. (Doc. 35.) During the litigation proceedings, the
18 parties resumed the settlement discussions, and on or about November 30, 2017, successfully
19 reached an agreement for the resolution of this matter.

20 The terms of the parties' settlement agreement provide for certain performance to occur
21 by or before the first part of January 2018, after which time they will submit a joint motion for
22 the dismissal of the case, in its entirety. The parties fully anticipate and expect that such
23 performance shall timely occur; however, if such is not accomplished, the parties would, in such
24 circumstance, notify this Court and submit a proposed modified scheduling order to resume the
25 litigation proceedings. This approach would avoid the need for a new lawsuit relative to the
26 parties' dispute, and the corresponding expenditure of judicial resources and litigant expense
27 should the case unexpectedly resume.

28 The parties are in agreement on this matter, and thus submit this stipulation, motion, and

1 proposed order jointly.

2 **II. AUTHORITY FOR MOTION**

3 “[T]he power to stay proceedings is incidental to the power inherent in every court to
4 control the disposition of the causes on its docket with economy of time and effort for itself, for
5 counsel, and for litigants.” Landis v. North American Co., 299 U.S. 248, 254-55 (1936). “How
6 this can best be done calls for the exercise of judgment, which must weigh competing interests
7 and maintain even balance. Id., citing Kansas City Southern Ry. v. United States, 282 U.S. 760,
8 763 (1931) and Enelow v. New York Life Ins. Co., 293 U.S. 379, 382 (1935).

9 In this case, the requested stay serves the interests of economy of time and effort for this
10 Court and for the litigants (as well as their counsel), because it allows for the completion of an
11 agreement for the resolution of all settlement of all claims, defenses, and issues in the above-
12 captioned case. As Plaintiff and Defendant are in agreement on the stay request, it would not
13 cause either party any undue hardship. The requested stay period of sixty (60) days is moderate
14 and not excessive, such that, if it was to become necessary, this 2017-filed case would still be
15 subject to an expedient trial. Further, it would avoid the need for the filing of a second lawsuit,
16 starting the litigation proceedings anew, should the settlement agreement not be performed as
17 projected (though such is not expected by the parties to occur).

18 Accordingly, good cause exists for this Court’s entry of an order staying the proceedings
19 in this above-captioned matter for a period of sixty (60) days, i.e., until January 29, 2018.

20 **III. CONCLUSION**

21 Based on the foregoing, the Parties jointly request that this Court stay this litigation for a
22 period of sixty (60) days, i.e., until January 29, 2018, to allow for the parties to finalize, perform,
23 and complete their settlement agreement.

24 Dated: December 1, 2017

MORRISON & FOERSTER LLP

25 By: /s/ Sabrina A. Larson
26 Sabrina A. Larson
27 Attorneys for Plaintiff
28 TIBCO SOFTWARE INC.

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Dated: December 1, 2017

GORDON & REES LLP

By: /s/ Kimberly D. Howatt
Kimberly D. Howatt
Attorneys for Defendant
FEI COMPANY

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Therefore, good cause appearing and to allow for the parties to finalize, perform, and complete their settlement agreement, the above-captioned case, in its entirety, is stayed for a period of sixty (60) days, i.e., until January 29, 2018.

Dated: December 1, 2017



Hon. Edward J. Davila
United States District Judge

ATTESTATION

I, Kimberly D. Howatt, am the ECF user whose ID and password are being used to file this Joint Stipulation, Motion, and [Proposed] Order for Stay of Litigation Pending Finalization of Settlement Agreement. In compliance with Civ. L.R. 5-1(i)(3), I hereby attest that Sabrina A. Larson has concurred in this filing.

Dated: December 1, 2017

GORDON & REES LLP

By: /s/ Kimberly D. Howatt
Kimberly D. Howatt
Attorneys for Defendant
FEI COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2017, a copy of the foregoing document was filed electronically with the Clerk of the Court using the Court's CM/ECF electronic filing system, which will send an electronic copy of this filing to all counsel of record.



Sylvia Durazo